

### **REMARKS/ARGUMENTS**

Reconsideration of this application in light of the above amendments and following comments is courteously solicited.

Dependent claim 46 was rejected under 35 U.S.C. 112, second paragraph. Applicant has canceled claim 46 thereby rendering the Examiner's rejection of same moot.

Independent claim 25 has been amended so as to define over the cited and applied reference, U.S. Patent 5,833,967 to Ramin (hereinafter '967). Independent claim 25 now sets forth that the preparation further comprises a thickener which is free of pyrogenic silica. It is respectfully submitted that claim 25 as amended patentably defines over the '967 document.

Initially, it should be noted that the preparation of the '967 document (Example 4 as pointed out by the Examiner) requires the use of a colloidal silica acid as a thickener. Claim 25 has been amended so as to set forth that the preparation of the present invention comprises a thickener which is free of pyrogenic silica. In this regard, the Examiner's attention is drawn to paragraph [0052] of the instant specification where it is specifically set forth that "pyrogenic silicic acid is unsuitable as it results in the composition crumbling away after it has been applied". Thus, it is believed that independent claim 25 is novel and non-obvious over the '967 patent. In further support of non-obviousness, Applicant asserts that the Examiner's conclusion vis-à-vis inherency of the claimed viscosity range is without merit. The viscosity claimed in independent claim 25 is the viscosity of the total composition. While one might make an argument for inherency of a single substance, in the instant composition, there are two separate dispersions claimed with a thickener. Clearly, the

viscosity can be varied depending on the amounts of the dispersions in the thickener and thus the claimed viscosity amount cannot be said to be inherent. For this additional reason, it is submitted that independent claim 25 patentably defines over the '967 document.

In light of the foregoing, it is submitted that all of the claims as pending patentably define over the art of record and an early indication of same is respectfully requested.

An earnest and thorough attempt has been made by the undersigned to resolve the outstanding issues in this case and place same in condition for allowance. If the Examiner has any questions or feels that a telephone or personal interview would be helpful in resolving any outstanding issues which remain in this application after consideration of this amendment, the Examiner is courteously invited to telephone the undersigned and the same would be gratefully appreciated.

If any fees are required in connection with this case, it is respectfully requested that they be charged to Deposit Account No. 02-0184.

Respectfully submitted,

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